



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
HARRISBURG, PENNSYLVANIA
17120

SECRETARY OF THE COMMONWEALTH

May 8, 2001

Honorable Thomas P. Gannon
Chairman
Judiciary Committee
House Box 202020
Harrisburg, PA 17120-2020

Dear Representative Gannon:

I am writing to you in support of Senate Bill 215. This legislation amends Titles 15 (Corporations and Unincorporated Associations) and 54 (Names) of the Pennsylvania Consolidated Statutes, relating to associations; making revisions, corrections and additions; and making repeals.

This support is based on our careful analysis and review of the Senate Bill 215. Legal counsel for the Corporation Bureau within our Department has worked closely with the Pennsylvania Bar Association's Title 15 Task Force for several years on this important legislation. It is our understanding that the Department of Revenue has also been working with the Task Force on additional technical amendments to the bill that we also support.

We believe Senate Bill 215 makes technical corrections that allow the Corporation Bureau to more easily fulfill its administrative duties under the Associations Code. In addition, the substantive provisions in the proposed legislation make necessary changes in Title 15, which will help our Commonwealth, remain competitive in today's business climate.

Thank you for your consideration.

Sincerely,

Kim Pizzingrilli
Secretary of the Commonwealth

CC: Members of the Judiciary Committee

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**Testimony of
William H. Clark, Jr. on
Senate Bill 215 (P.N. 656)**

Before the House Judiciary Committee

May 9, 2001

Introduction

Good morning. My name is William H. Clark, Jr. I am a partner in the law firm of Drinker Biddle & Reath LLP, where I practice corporate and general business law in the firm's Philadelphia office.

I am the Chair of the Business Law Section of the Pennsylvania Bar Association. Both that section and the full bar association have endorsed Senate Bill 215. I am here today on behalf of the Pennsylvania Bar Association to express its support for Senate Bill 215 and to urge the enactment of Senate Bill 215 before the General Assembly recesses for the summer.

I am also the Draftsman for the Title 15 Task Force of the Business Law Section, which prepared Senate Bill 215. Having been intimately involved in the preparation of Senate Bill 215, I would be happy to answer any questions the Committee may have about any of the particular provisions in the bill.

Finally, I should note that I am one of 24 appointed members of the Corporate Laws Committee of the ABA Business Law Section, which is responsible for revising and updating the Model Business Corporation Act. I also am the draftsman for a special task force of the ABA Business Law Section, which is preparing a complete revision of the Model Nonprofit Corporation Act. Thus, I have a national perspective on corporation law and the issues dealt with in Senate Bill 215.

My testimony this morning is intended to provide a general introduction both to Title 15 of the Pennsylvania Consolidated Statutes and also to Senate Bill 215.

History of Senate Bill 215

Senate Bill 215 is the latest update of Pennsylvania's business organization laws prepared by the Title 15 Task Force. Title 15 of the Pennsylvania Consolidated Statutes was completely revised in 1988. Important parts of the 1988 legislation were the entirely

new Business Corporation Law of 1988 and the new Revised Uniform Limited Partnership Act, as well as substantial revisions to other provisions of Title 15. The 1988 legislation was followed by amendments to Title 15 in 1990, 1992 and 1994.

Senate Bill 215 is based on the texts of bills considered in the past three terms of the General Assembly:

- 1995 Senate Bill 1128 passed the Senate by a vote of 48 to 0, but was not considered by the House of Representatives because of a lack of time at the end of the legislative session. Senate Bill 1128 was reintroduced as 1997 Senate Bill 1157.
- 1997 Senate Bill 1157 passed the Senate by a vote of 47 to 0, and also passed the House of Representatives. The bill was never finally enacted, however, because the Senate did not concur in the amendments added to Senate Bill 1157 in the House in connection with the AMP/AlliedSignal takeover battle. The amendments to Senate Bill 1157 added during the AMP/AlliedSignal debate were not included when the legislation was reintroduced as 1999 Senate Bill 393. (Thus those amendments are also not included in Senate Bill 215.)
- 1999 Senate Bill 393 passed the Senate by a vote of 46 to 1, but was not considered by the House of Representatives because of a lack of time at the end of the legislative session. Senate Bill 393 was reintroduced as 2001 Senate Bill 215.

Printer's Number 656 of Senate Bill 215 is identical to Senate Bill 393 except for changes in the various effective dates included in the bill and the deletion of an amendment to one section of Title 15. Thus, all of the provisions in Senate Bill 215 have passed the Senate twice (in Senate Bills 1157 and 393) and the House once (in Senate Bill 1157).

Overview of Title 15

What is included in Title 15

Title 15 includes the following provisions:

- introductory provisions (chapter 1)
- corporations generally (chapter 5)
- Business Corporation Law of 1988 (chapters 11 through 41)
- Nonprofit Corporation Law of 1988 (chapters 51 through 61)
- Cooperative Corporation Law of 1988 (chapters 71 through 75)
- Electric Cooperative Law of 1990 (chapter 73)

- Cooperative Agricultural Association Law of 1990 (chapter 75)
- Workers' Cooperative Corporation Law of 1988 (chapter 77)
- partnerships generally (chapter 81)
- the law on limited liability partnerships (chapter 82)
- Uniform Partnership Act (chapter 83)
- Revised Uniform Limited Partnership Act (chapter 85)
- the law on electing partnerships (chapter 87)
- Limited Liability Company Law of 1994 (chapter 89)
- the law on unincorporated associations (chapter 91)
- Professional Association Act of 1988 (chapter 93)
- the law on business trusts (chapter 95)

Senate Bill 215 includes amendments to the following provisions from the above list:

- introductory provisions (chapter 1)
- Business Corporation Law of 1988
- Nonprofit Corporation Law of 1988
- partnerships generally (chapter 81)
- limited liability partnerships (chapter 82)
- Uniform Partnership Act (chapter 83)
- Revised Uniform Limited Partnership Act (chapter 85)
- Limited Liability Company Law of 1994 (chapter 89)
- business trusts (chapter 95)

Senate Bill 215 also includes some minor amendments to Title 54 dealing with fictitious names. The fictitious name provisions of Title 54 have traditionally been included in Title 15 legislation because both statutes are administered by the Corporation Bureau of the Department of State and the names provisions of both titles are related to each other.

The subject matter of each of the entity organizational laws included in Title 15 can be broadly described as the "internal affairs" of the entity. The various statutes each deal with the following types of issues:

- how the entity is formed
- who has the responsibility to manage its affairs
- the rights and duties of the persons who manage its affairs
- who has authority to sign contracts and incur obligations
- who are the owners of the entity

- what the rights of the owners are to information about the entity and to vote on various issues
- the procedures for fundamental transactions such as a merger or dissolution of the entity

What is not included in Title 15

Aside from unique events such as the attempted takeover of AMP by AlliedSignal, the subjects addressed in Title 15 generally are not controversial and thus do not generate much attention in the legislative process. The various laws included in Title 15 do not deal, for example, with issues such as:

- environmental concerns
- labor relations and collective bargaining
- employment concerns, such as fringe benefits, or discriminatory hiring or firing
- workplace safety, such as workers' compensation or occupational health
- the social responsibilities of businesses
- consumer issues

Preparation of Senate Bill 215

As I mentioned at the beginning of my testimony, Senate Bill 215 was prepared by the Title 15 Task Force of the Business Law Section of the Pennsylvania Bar Association. While the membership of the Task Force has changed over the years, since the middle of the 1980s it has always included at least one person on the payroll of the Department of State, at least one law school professor and at least three in-house lawyers from different Pennsylvania corporations. There has always been a conscious effort to ensure that the members of the task force in private practice are distributed throughout the state.

Beginning with the enactment of the 1988 Business Corporation Law, and continuing with the 1990, 1992 and 1994 amendments to Title 15, the Task Force has prepared a detailed commentary on the sections of Title 15 that were proposed for revision. That commentary is published in Purdon's Statutes and other editions of Title 15, and has been a helpful guide for practicing lawyers and judges. The commentary that accompanies Senate Bill 215, which is almost 300 pages long, has been supplied to the staff of the Committee for its information in reviewing the bill.

Over the years the Task Force has monitored developments around the country on an on-going basis in an effort to keep Title 15 up-to-date. Two examples from Senate Bill 215 will illustrate how the Task Force has borrowed from other sources:

- Section 1709 is a new provision that deals with the conduct of shareholder meetings. There is currently no statutory law on this subject. It is hoped that the new section will bring helpful clarity and certainty to this area. Section 1709 is based on a provision that was added to the Model Business Corporation Act in 1996.
- Section 1924(b)(4) is a new provision that permits a corporation to reorganize into a holding company system so long as the rights of its shareholders are not affected. A similar result can be achieved under the existing law but it requires engaging in a merger. The new provision will eliminate the need for the merger. Section 1924(b)(4) is based on Section 251(g) of the Delaware General Corporation Law.